IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

MFA.No. 793 of 2001()

OPMV.3624/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANT:

JOSE @ OUSEPH, S/O.LONAPPAN,
PALAKKAL HOUSE, KONCHERY ROAD,
KILLANNUR VILLAGE, THRISSUR TALUK.

BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS:
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1. K.V.DEVASSY, KATHIYADAN HOUSE,
MUTTACHERIYIL, KURUPPAMPADY, RAYAMANGALAM VILLAGE,
ERNAKULAM.

2. ORIENTAL INSURANCE CO. LTD., ANGAMALY.

ADDL. 3. B.JAYAKUMAR, KAIPPITTIL HOUSE, MANIKKAMANGALAM,
ERNAKULAM.

4. DEVASSY, KALLARAKKAL HOUSE, ANGAMALY.

5. NATIONAL INSURANCE CO. LTD., ERNAKULAM.

BY ADV. SRI.JOE KALLIATH
SRI.M.JACOB MURICKAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 17.12.2007, THE COURT ON 17/12/2007 DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO.793 OF 20O1

Dated this the 17th day of December, 2007

JUDGMENT

Koshy, J.

The appellant sustained injuries in a motor accident. He was aged 33 at the time of accident. He claimed compensation of an amount of Rs.5,00,000/-. The Tribunal found that the accident occurred due to the negligent driving of the vehicle by the first respondent. The vehicle was insured by the second respondent Insurance Company at the time of accident. T The Tribunal awarded only Rs.1,04,550/- as compensation. The only question of quantum of compensation is disputed in this appeal.

2. The following injuries were sustained by the appellant:

"1) Head injury, suspected mandible fracture.

2) Compound fractures both bones right and left leg.

3) Patient is in shock."

He was taken to the Kovai Medical Centre and Hospital Limited and he was admitted there as inpatient from 8.9.1993 to 17.9.1993 and thereafter from 8.12.1994 to 12.12.1994. Exhibits A70 and A71 discharge certificates show that there was old case of non union

tibia with G.K. Nail (Lt.). Even though in Exhibit A72 certificate Dr.Soman mentioned several injuries, including fracture of nasal bone, fracture of ribs, loss of teeth etc., no such injuries are mentioned in the wound certificate or even in the treatment records produced. The Tribunal rightly noted that only the injury noted in Exhibits A69 to A71 was compound fracture both bones of right and left leg. Therefore, PW5 Dr.Soman was rightly disbelieved and the Tribunal found that the petitioner has 20% disability. We see no reason to interfere with the assessment of 20% disability made by the Tribunal. However, we note that the claimant was a professional driver. The accident was occurred when he was driving a tempo van. The accident occurred in 1993. He was also having heavy motor vehicle licence also at that time. Since the accident occurred in 1993, the Tribunal fixed at Rs.1,000/- as the monthly income. We are of the view that atleast Rs.1,500/- ought to have been fixed as monthly income. The Tribunal fixed 17 as the multiplier. He was 32 years old at the time of accident. Considering second schedule as a guideline, no enhancement is required in fixation of multiplier. If that be so, the compensation payable will be:

$$1500 \times \frac{12}{100} \times 17 \times 20 = 61,200.$$

The Tribunal awarded Rs.40,800/- for disability and loss of earning power. Therefore, additional amount payable will be Rs.20,400/-. Entire medical expenses were reimbursed. We are of the view that compensation granted on other heads are just and reasonable and no enhancement is necessary on that count. The additional amount of Rs.20,400/- should be deposited by the second respondent Insurance Company with 7.5% interest from the date of application till the date of deposit, over and above the amount decreed by the Tribunal. On deposit of the above amount, the appellant-petitioner is allowed to withdraw the same. The appeal is allowed, partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.793 OF 2001

JUDGMENT

17.12.2007